

ASSEMBLY BILL

No. 764

Introduced by Assembly Member Nava

February 26, 2009

An act to amend Sections 10085 and 10085.5 of the Business and Professions Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 764, as introduced, Nava. Real estate brokers.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements be submitted to him or her at least 10 calendar days before the materials are used. Existing law authorizes the commissioner to determine the form of the advance fee agreements.

This bill would instead require the commissioner to determine the form of advance fee agreements and to mandate the submission of advance fee agreement materials prior to their use.

The Real Estate Law makes it unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with a mortgage loan before the borrower becomes obligated to complete the loan and for performing any other activity for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of the Real Estate Law. A violation of that provision constitutes a public offense punishable by a fine of up to \$10,000 for an individual or \$50,000 for a corporation.

This bill would increase those fines to \$20,000 and \$60,000, respectively. The bill would also make it unlawful for any person to claim, demand, charge, receive, collect, or contract for any fee for performing services for borrowers in connection with the modification of the terms of a mortgage loan, unless the person is a licensed real estate broker. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10085 of the Business and Professions
2 Code is amended to read:
3 10085. The commissioner ~~may~~ *shall* require that any or all
4 materials used in obtaining advance fee agreements, including but
5 not limited to the contract forms, letters or cards used to solicit
6 prospective sellers, and radio and television advertising be
7 submitted to him or her at least 10 calendar days before they are
8 used. Should the commissioner determine that any such matter,
9 when used alone or with any other matter, would tend to mislead,
10 he or she may, within 10 calendar days of the date he or she
11 receives same, order that it not be used, disseminated, nor
12 published. Any person using, disseminating, or publishing any
13 matter ~~which~~ *that* the commissioner has ordered, pursuant to this
14 section, not to be used, published, or disseminated shall be guilty
15 of a misdemeanor punishable by a fine not exceeding one thousand
16 dollars (\$1,000) or by imprisonment in the county jail not
17 exceeding six months, or both, for each ~~such~~ use, dissemination,
18 or publication.
19 The commissioner ~~may~~ *shall* determine the form of the advance
20 fee agreements, and all material used in soliciting prospective
21 owners and sellers shall be used in the form and manner which he
22 or she determines is necessary to carry out the purposes and intent
23 of this part.

1 Any violation of any of the provisions of this part or of the rules,
2 regulations, orders or requirements of the commissioner thereunder
3 shall constitute grounds for disciplinary action against a licensee,
4 or for proceedings under Section 10081 of this code, or both. These
5 sanctions are in addition to the criminal proceedings hereinbefore
6 provided.

7 SEC. 2. Section 10085.5 of the Business and Professions Code
8 is amended to read:

9 10085.5. (a) It shall be unlawful for any person to claim,
10 demand, charge, receive, collect, or contract for an advance fee
11 (1) for soliciting lenders on behalf of borrowers or performing
12 services for borrowers in connection with loans to be secured
13 directly or collaterally by a lien on real property, before the
14 borrower becomes obligated to complete the loan or, (2) for
15 performing any other activities for which a license is required,
16 unless the person is a licensed real estate broker and has complied
17 with the provisions of this part.

18 *(b) It shall be unlawful for any person to claim, demand, charge,*
19 *receive, collect, or contract for any fee for performing services*
20 *for borrowers in connection with the modification of the terms of*
21 *a loan secured directly or collaterally by a lien on single-family*
22 *residential real property, unless the person is a licensed real estate*
23 *broker.*

24 ~~(b)~~
25 (c) This section does not prohibit the acceptance or receipt of
26 ~~an advance~~ any fee by ~~any~~ a bank, savings association, credit
27 union, industrial loan company, or person acting within the scope
28 of a license issued to that person pursuant to Division 9
29 (commencing with Section 22000) of the Financial Code, in
30 connection with loans to be secured directly or collaterally by a
31 lien on real property *or in connection with the modification of the*
32 *terms of a loan secured directly or collaterally by a lien on*
33 *single-family residential real property.* This section does not apply
34 to charges made by title insurers and controlled escrow companies
35 pursuant to Chapter 1 (commencing with Section 12340) of Part
36 6 of Division 2 of the Insurance Code.

37 ~~(e)~~
38 (d) A violation of this section is a public offense punishable by
39 a fine not exceeding ~~ten~~ *twenty* thousand dollars ~~(\$10,000)~~
40 *(\$20,000)*, by imprisonment in the county jail for a term not to

1 exceed six months, or by both that fine and imprisonment, or if by
2 a corporation, the violation is punishable by a fine not exceeding
3 ~~fifty~~ *sixty* thousand dollars ~~(\$50,000)~~ *(\$60,000)*.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.